IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2472 OF 2003

Shri Raghunath Bahiru Shukare ..Petitioner

Vs.

State of Maharashtra and ors. ..Respondents

Mr. P.C. Kansara for petitioner.
Mrs.M.P. Thakur, AGP for respondents.

**CORAM: B.H. MARLAPALLE & NARESH H. PATIL,JJ.**

**Date : September 21, 2006.**

**P.C.:**

1. Heard Mr. Kansara the learned counsel for the petitioner and Mrs. Thakur the learned AGP for the respondents.

2. The petitioner is aggrieved by the order dated 24/9/2002 passed by the Additional Commissioner, Pune Division at Pune, whereby the application filed under Section 48(1) of the Land Acquisition Act, 1894 came to be rejected.

3. Agricultural land from Gat No.43 admeasuring 2 Hectares and 40 Ares and from Gat No.37 admeasuring 1

Hectare and 20 Ares was sought to be acquired by the State Government for rehabilitation of the project affected persons (Chaskaman Project) of village Mukhai in Shirur Taluka of Pune District. It was contended that the permissible ceiling was 14 acres and 34 gunthas and if the proposed acquisition was allowed the holding of the land owners would be reduced and it would come below 14 acres and 34 gunthas. In the first round the applications were rejected and, therefore, the land owners had approached this court by filing writ petitions. These petitions were rejected and consequently the land owners had approached the Apex Court in Civil Appeal No.11809 of 1995 and the connected appeals. The present petitioner's appeal was 13720 of 1995. The appeals were disposed off by the order dated 1/12/1998 by remanding the cases to the Additional Commissioner, Pune Division, Pune for fresh considerations on the basis of the relevant record and the circulars issued by the State Government from time to time.

4. It appears that the petitioner filed an application under Section 48(1) of the Land

Acquisition Act, 1894 on 24/4/2000 before the Additional Commissioner by taking support of the order passed by the Apex Court on 1/12/1998 and place heavy reliance on the circular dated 28/6/1998 which was issued by the Additional Commissioner, Pune. In the impugned order the Additional Commissioner noted that the circular dated 28/6/1998 was withdrawn by the State Government and was not in operation when the order was passed. The Additional Commissioner also considered the holding and, in fact, the individual holding of all the four brothers, namely, Abasaheb Bahiru shukre, Baburao Bahiru Shukre, Raghunath Bahiru Shukre and Dattatraya Bahiru Shukre and held that their individual holdings could not be worked out on the basis of the alleged partition dated 12/3/1975 as the same was not registered and even in the revenue records no entry was taken of the said partition till the Notification under Section 11 of the Maharashtra Resettlement Project Displaced Persons Act, 1976 was issued on 20/9/1979. The Commissioner also considered the fallow land and held that in no way the acquisition sought could be held to be illegal and the application was rejected.

5. The first grievance raised by Mr. Kansara is regarding the circular dated 28/6/1998 not having been considered by the Additional Commissioner and as per Mr. Kansara the order passed by the Apex Court on 1/12/1998 mandated the Additional Commissioner to take into consideration the said circular. In this regard he relies upon the following observations made in the said order by the Apex Court:-

> "We have heard counsel for the parties. The principal question which arises in these matters, in respect of acquired land, is regarding exclusion of pot Kharab or grass land, as also those lands in respect of which agreements of sale or oral partitions have been effected. In terms of circulars issued by the authorities from time to time and, particularly, Circulars dated 8th June, 1993, 10th June, 1981, 2nd November, 1982 and the recent circular issued by the Commissioner, Pune Division dated 28th June, 1998. Counsel appearing for the appellants have placed a strong reliance on the aforesaid circulars in support of their contentions.
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> During the pendency of appeals in this Court, in the light of the above contentions, we had called upon counsel for the respondents to examine the matter and submit a statement showing the correct position in respect of the pending cases. Such a statement, though prepared, would require detailed and individual examination of each case

> separately, on the basis of the village record and related documents. We, therefore, feel that it would be appropriate to remand all these matters to the Commissioner, Pune Division, Pune to examine them afresh on the basis of the Government Circulars and the relevant record. The parties will be at liberty to submit all the necessary particulars and record in support of their contentions before the Commissioner and the Commissioner will examine the said materials and give the opportunity of personal hearing to the respective parties and, based thereon, will decide the matters afresh."

6. The order passed by the Supreme Court is clear and unambiguous. On remand the Additional Commissioner was required to examine the petitioner's application for deletion of the subject land from the acquisition, on the basis of the relevant record, related documents and the circulars. Though the order was passed by the Apex Court on 1/12/1998 the petitioner submitted his application on 24/4/2000 and the circular dated 28/6/1998 was withdrawn by the State Government on 11/2/2000 as it was found that the Divisional Commissioner, Pune had issued the said circular illegally. It was contended by Mr. Kansara that if the Divisional Commissioner had considered the petitioner's case immediately on remand by the Apex Court, the circular dated 28/6/1998 ought to have been

considered and the Additional Commissioner could not subsequently deny the benefit of the said circular purportedly on the ground that the petitioner's application was filed on 24/4/2000.

7. We do not find any merit in these submissions. It was not directed by the Apex Court that the petitioner's case was required to be considered on the basis of a particular circular. The directions implied that the circulars which were applicable would be considered and the circular dated 28/6/1998 is already withdrawn by the State Government on the grounds that it was illegally issued by the Additional Commissioner, Pune, obviously the Additional Commissioner could not rely upon the same and, therefore, in our considered opinion the Additional Commissioner did not commit any error in that regard.

8. Now coming to the holdings of all the four brothers individually, the affidavit in reply filed by the Special Land Acquisition Officer No.17, Pune states that Abasaheb's holding came to 13 acres and 10 gunthas, Baburao's holding came to 17 acres and 6

gunthas, Raghunath's holding came to 14 acres and 34 gunthas and Dattatray's holding came to 14 acres and 34 gunthas and these holdings were from Khata Nos.7, 119, 163 and 70 and Survey Nos.37, 42 and 43 respectively. The application submitted before the Additional Commissioner and which has been rejected by the impugned order pertains to the land in Gat No.43 admeasruing 2 Hectare and 40 Ares and Gat No.37 admeasuring 1 Hectare and 20 Ares. The affidavit clearly states that by the said acquisition the minimum ceiling limit has been maintained and more so with the entire holding is a irrigated land as has been pointed out in Exh.2 to the affidavit in reply.

9. The impugned order also has taken into consideration Pot Kharab land (fallow land). It is also noted that the so called partition dated 12/3/1975 was not registered and was not acted upon to correct the revenue records till the specified dated i.e. 20/9/1979 and, therefore, it could not be accepted that there was a family partition of the total holding.

10. We are, therefore, satisfied that all the four issues raised by the petitioner before the Additional Commissioner have been properly considered and the findings recorded are supported by a reasoned order. The impugned order does not suffer from any infirmities and, therefore, this petition must fail at the threshold.

11. Hence, the petition is hereby rejected summarily.

12. Mr. Kansara submitted an oral application praying for the order of status quo to be maintained for a short period, more so when the petitioner is in possession of the land. The same prayer has been opposed by Mrs. Thakur, the learned AGP.

13. We allow the oral application and direct the parties to maintain status quo for a period of eight weeks from today.

**(Naresh H. Patil, J.)** **(B.H. Marlapalle,J.)**